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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/707,610	11/07/2000	Christopher M. Hofmeister	118-P-005	9906

7590

11/04/2004

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EXAMINER

STEPHENS, JACQUELINE F

ART UNIT PAPER NUMBER

3761

DATE MAILED: 11/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/707,610

Applicant(s)

HOFMEISTER ET AL.

Examiner

Jacqueline F Stephens

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-59 is/are pending in the application.
- 4a) Of the above claim(s) 31-59 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 20-30 is/are allowed.
- 6) ☐ Claim(s) 1-13 and 15-19 is/are rejected.
- 7) ☒ Claim(s) 14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

**DETAILED ACTION**

***Election/Restrictions***

1. Applicant's election of claims 1-30 in the reply filed on 8/16/04 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-13, 15-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Kwarizadeh et al. USPN 5903222.

As to claims 1 and 11, Kwarizadeh discloses a wetness monitoring system 10, 20, 40, comprising a sensor, conductors, absorbent material 18 extending between the conductors, a data collector comprising a compiling processor 92, electric circuit 14,24, communication device 89, and power source (col. 9, lines 2-24). The system further comprises a control station having a receiver 89, control processor 82, and an associated memory containing a predetermined wetness value (col. 6, line 8 through col. 7, line 27). Kwarizadeh discloses the sensor is to be used with a diaper worn by the individual (col. 3, lines 39-42).

As to claims 2-10 and 12, the limitations are directed to an intended use of the article. Intended use must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). If the prior art structure is capable of performing the intended use, then it meets the claim limitations.

As to claim 13, see col. 3, lines 60-65.

As to claim 15, see col. 3, lines 60-65, where the sensor is removed and attached to another dry garment. Thus, the sensor inherently has a fastener to enable it to be attached to the garment.

As to claim 16, see col. 5, lines 45-60.

As to claims 17 and 18, see Figures 1 and 2.

As to claim 19, see col. 13, lines 9-16.

#### ***Allowable Subject Matter***

4. Claim 14 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.


5. Claims 20-30 are allowed. The following is a statement of reasons for the indication of allowable subject matter: The overall claimed combination of a method of detecting wetness comprising the steps of using a sensor to detect wetness values, collecting data from the sensor, periodically generating and transmitting wetness measurement data, comparing the data with a predetermined value, in combination with the claimed apparatus is neither anticipated nor rendered obvious by the prior art of record.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F Stephens whose telephone number is (703) 308-8320. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on (703)308-1412. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jacqueline F Stephens  
Examiner  
Art Unit 3761

October 30, 2004